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February 29, 2008

Hernando Torres Corredor
Consejo Superior de la Judicatura
Palacio de Justicia Calle 12 No. 7-65
Bogotá, Colombia

Dear Dr. Torres Corredor:

As Chairman of the Committee on Education and Labor in the United States House of Representatives, I write to express my continued serious concern over the January 2008 decision by the Colombian *Consejo Superior de la Judicatura* to remove Judge José Nirio Sánchez from his position as one of three Colombian specialized labor judges handling the backlog of criminal cases stemming from the thousands of assassinations of labor union leaders and members.

Prior to his unexpected and unexplained removal, Judge Sánchez issued an opinion in 2007 convicting several soldiers in the Colombian Army's 18th Brigade for the assassinations of union leaders in the province of Arauca, and he ordered an investigation into whether higher-level Colombian military leaders had a role in planning those killings. In the past six months, Judge Sánchez also convicted a top paramilitary commander – Salvatore Mancuso – in one labor homicide case, and he ordered an investigation into whether the multinational Nestle Corporation had a role in another labor killing case.

As you know, I wrote last month to President Álvaro Uribe Vélez about this matter, and I recently received a written response from Vice President Francisco Santos Calderon. Vice President Santos affirmed that José Nirio Sánchez "has an excellent reputation" as a judge, but the Vice President was unable to provide any justification for his sudden removal. Nor was the Vice President able to answer the questions I had posed about the specific criteria used by Colombia's Judicial Branch when it reviews the three specialized labor judges – apparently every six months – to decide whether they should be replaced in the middle of the labor homicide cases pending before them.

Several human rights advocates in Colombia have written to me to express their concern that Judge Sánchez was removed in retaliation for several of his high-profile legal

rulings. For example, the Director of the Escuela Nacional Sindical in Colombia, José Luciano Sanín Vásquez, wrote to me saying:

I am deeply concerned that the only judge that the government did not retain was Judge Sánchez, especially given his well-reasoned decisions in two very important cases - one against members of the Colombian armed forces for the murder of three union leaders in Arauca and another demanding the investigation of a multinational company for the murder of a trade unionist under its employ. The dismissal of Judge Sánchez sends an unambiguous message that these judges should take care not to challenge the official story or to pursue powerful investors in the country, a message which seriously compromises the independence of the judiciary and denies justice to the victims.

Indeed, Colombian human rights observers point to reports that a sub-division of the *Consejo Superior* voted by a split margin of 12-11 to suddenly remove Judge Sánchez in January 2008, while leaving the two other specialized labor judges in their positions. These observers worry that inappropriate political considerations may threaten the independence of the legal process that must still adjudicate many more labor homicide cases in the years to come. Therefore, I now write to you with a number of important questions to which I respectfully request your response.

- *What were the specific criteria used by the Consejo Superior de la Judicatura when it decided in January 2008 to retain two of the specialized labor judges, but to replace Judge José Nirio Sánchez?*

In his letter, the Colombian Vice President explained that every six months certain members of the *Consejo Superior* decide whether to retain or remove a specialized labor judge based on a "peer review process." However, the Vice President was unable to provide any further details about the specific criteria used in this peer review process. I have heard reports from Colombian human rights advocates that the January 2008 decision surrounding the removal of Judge Sánchez was highly politicized, and led to a split vote among the officials participating in the review process. Apparently this vote was taken by a sub-division of the *Consejo Superior* called the Superior Tribunal of the Judicial District of Bogotá. Therefore, I am particularly interested to know the following about the peer review process:

- 1) whether the *Consejo Superior* has created specific criteria for evaluating each specialized labor judge when deciding whether to retain that particular judge for another six-month term;

- 2) whether the three specialized labor judges are made aware of the criteria by which they will be evaluated at the end of each six-month period;
- 3) whether the Superior Tribunal of the *Consejo Superior* took an official vote in January 2008 to replace Judge Sánchez, and if so, whether human rights observers have correctly reported that the vote was a closely-split 12-11; and
- 4) whether the Superior Tribunal made any specific findings about Judge Sánchez's judicial performance in connection with its decision to remove him from that particular judicial position.

I ask for these criteria because I have consistently been told that Judge José Nirio Sánchez was performing his judicial duties with the prudence and excellence warranted by such an important legal process. As I explained above, Vice President Santos affirmed that Judge Sánchez has an "excellent reputation." In addition, various attorneys in Colombia's Office of the Attorney General – from the lowest level prosecutors to the highest level officials – have consistently expressed support for renewing the positions of the exact same three specialized labor judges, including Judge Sánchez. Moreover, a Colombian human rights attorney who handles cases before the three specialized labor judges wrote to me as soon as he heard that Judge Sánchez had been unexpectedly replaced to express his opinion that Judge Sánchez had done "excellent work" handling the labor homicide cases.

Given these uniformly positive opinions, I cannot understand why the *Consejo Superior* would replace Judge Sánchez – with no explanation whatsoever – in the middle of several high-profile criminal cases over which he was presiding. I hope that you can explain that decision.

- *How does the Consejo Superior de la Judicatura guarantee that improper political considerations do not affect the periodic decisions – which will apparently occur every six months – to retain or replace each of the three specialized labor judges?*

I understand that the *Consejo Superior* has classified the specialized labor judges in such a way that Article 132 of Law 270 of 1996 requires that they be reevaluated every six months and then officially reappointed or dismissed from their positions, even if certain criminal cases are still pending. This reappointment process could be seen, in a sense, as a vote on whether to ratify the judge's decisions from the past six-month period, and this process could adversely affect judicial independence. Indeed, several Colombian human rights advocates have written to me or called my staff to identify at least three decisions they believe may have upset entrenched political interests and therefore may have led to the contentious split-vote to replace of Judge Sánchez:

Conviction of soldiers from the Colombian Army's 18th Brigade
for labor assassinations in Arauca:

In August 2004, three Colombian labor leaders – Jorge Prieto, Leonel Goyeneche and Héctor Martínez – were assassinated by three members of the Colombian Army's 18th Brigade in the province of Arauca. In response to national and international outrage over the killings, Colombian military authorities asserted that the three labor activists were members of the ELN guerrilla group and claimed that the victims had opened fire upon the soldiers during a routine operation to execute arrest warrants. Colombian Government officials initially supported the military version of events. However, after hearing testimony and carefully weighing the evidence in this case, Judge José Nirio Sánchez issued a lengthy legal ruling in 2007 that convicted the Colombian Army members of "Aggravated Homicide." Judge Sánchez found that the labor leaders had been killed in a "state of defenselessness," and that after they were dead, the soldiers had altered the scene of the crime by placing guns in the hands of the dead bodies of the unarmed men in order to make it look like the victims had engaged in armed conflict. Judge Sánchez not only sentenced the members of the Colombian Army to 40-year sentences, his legal opinion also called for an investigation as to whether three higher level Colombian military officers – a Colonel and two Captains – had ordered the killings.

Investigation of the multinational Nestle Corporation:

Also in late 2007, Judge Sánchez wrote a 110-page legal ruling in a case stemming from the brutal murder of a Colombian labor leader named Luciano Enrique Romero Molina. As Judge Sanchez explains in his decision, in late 2005 – months after passage of the "Justice and Peace" Law – Molina was abducted and tortured by paramilitaries, and when he would not give them information about his complaints concerning the alleged labor violations of the multinational Nestle Corporation, they stabbed him to death with more than fifty strikes of a machete. Judge Sánchez convicted the individual defendant who was directly responsible for the killing, but significantly, he also ordered an investigation into whether the Nestle Corporation was in any way responsible for ordering the killing. While courts outside of Colombia – such as the Inter-American Court for Justice and the federal courts in the United States – have dealt with cases in which multinational corporations have been accused of playing a role in anti-union violence in Colombia, Judge Sánchez's ruling appears to be groundbreaking for the Colombian courts. According to human rights observers in Colombia, this was the first judicial decision since the backlog process began in mid-2007 in which one of the three Colombian specialized labor judges called for an investigation of the possible role a multinational corporation in the assassination of a Colombian labor leader.

Conviction of a top paramilitary commander Salvatore Mancuso:

In October 2007, Judge Sánchez convicted Salvatore Mancuso for his role in the killing of Aury Sará Marrugo, who was a leader in the Colombian petroleum workers union called "USO." Judge Sánchez sentenced Mancuso to 40 years for his role in the homicide. According to several human rights observers, this decision received considerable media attention, and Judge Sánchez received threats to his own security after ruling in this case.

By removing Judge Sánchez from his judicial position only months after he issued these high-profile legal opinions, some Colombian legal observers worry that certain individuals within the *Consejo Superior* may be expressing their disapproval of the outcomes of these particular politically-charged cases. Thus, given the importance of avoiding even the appearance of impropriety in this important legal process, I hope that you can detail what steps the *Consejo Superior* has taken to ensure that improper political considerations do not affect the biannual reappointment process for the three remaining specialized labor judges. I am particularly interested to know your opinion as to:

- 1) whether this system of justice for labor homicide cases would operate more efficiently and with more public confidence if the specialized labor judges were appointed for terms of longer than six months; and
- 2) whether in order to appoint the specialized labor judges for longer terms the *Consejo Superior* could simply reclassify the judicial positions so as not to fall under the six-month constraints of Article 132 of Law 270 of 1996, or whether it would take an act of the Colombian Congress to allow for longer judicial terms for these judges.


My colleagues in the United States Congress and I want to work with the Colombian government to create a sustainable legal process for finally ending the impunity enjoyed by those who have harassed or killed labor leaders, as well as those who have ordered or conspired in the harassment or killings. While we see considerable promise in the process you began in the summer of 2007 when the *Consejo Superior* signed *Acuerdo No. 4082* to establish the three specialized judicial positions to handle labor homicide cases, we worry that this progress could still falter. In addition to our serious concerns over the treatment of Judge Sánchez, we are also concerned that the classification of judges in such a way that they can be replaced without explanation every six months will result in a legal system with diminished judicial independence and unnecessary delays in investigating and prosecuting criminal cases. It is my hope that our two nations can work in partnership to increase American assistance to fund the investigation, prosecution, and

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adjudication of these cases while your country enacts further legal reforms that will punish and deter anti-union violence and promote the rule of law.

Thank you for your attention to this request.

Sincerely,

A handwritten signature in black ink that reads "George Miller". The signature is written in a cursive style, with the first name "George" and the last name "Miller" clearly legible.

George Miller
Chairman
Committee on Education and Labor

cc: The Honorable Álvaro Uribe Vélez, President of Colombia
The Honorable Francisco Santos Calderon, Vice President of Colombia
The Honorable Mario Germán Iguarán Arana, Attorney General of Colombia
The Honorable Carolina Barco, Colombian Ambassador to the United States
The Honorable William Brownfield, U.S. Ambassador to Colombia
The Honorable Marcelo Castro Fox, I.L.O. Representative to Colombia